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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 29th July, 2010*
Judgment Delivered On: 10th August, 2010

\+ **W.P.(C) 793/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

BHAGWATI PRASAD ..... Respondent
Through: Ms.Kittu Bajaj, Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

For orders, see W.P.(C) No.14027/2009.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

AUGUST 10, 2010
mm

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 29th July, 2010*
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\+ **W.P.(C) 14027/2009**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

MADHU BHUSHAN ANAND ..... Respondent
Through: Ms.Kittu Bajaj, Adv.

\+ **W.P.(C) 401/2010**

DTC ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms. Latika Chaudhary, Advocate

versus

SUDERSHAN LAL SHARMA ..... Respondent
Through: Ms.Rekha Aggarwal, Mr.D.S.Kauntae, Advs.

\+ **W.P.(C) 565/2010**

DTC ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms. Latika Chaudhary, Advocate

versus

SURESH CHANDER ..... Respondent
Through: Mr.S.N.Sharma, Adv.

\+ **W.P.(C) 598/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

ZILE SINGH ..... Respondent
Through: Mr.N.L.Bareja, Adv.

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+ **W.P.(C) 754/2010**

D.T.C. ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

JAG SHORAN ..... Respondent
Through: Ms.Kittu Bajaj, Adv.

+ **W.P.(C) 1902/2010**

DTC ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

SURENDER KUMAR ..... Respondent
Through: Ms.Kittu Bajaj, Adv.

+ **W.P.(C) 2274/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

SH.GURBACHAN LAL & ORS. ..... Respondents
Through: Mr.N.L.Bareja, Adv.

+ **W.P.(C) 3919/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

RAJO SAINI ..... Respondent
Through: Ms. Kittu Bajaj, adv.

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+ **W.P.(C) 423/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

SATYA PRAKASH KHURANA ..... Respondent
Through: Ms.Kittu Bajaj, adv.

+ **W.P.(C) 756/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

SOM DUTT ..... Respondent
Through: Ms.Deepali Gupta, Adv.

+ **W.P.(C) 832/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

SH RAM AVTAR SHARMA ..... Respondent
Through: Mr.S.N.Sharma, adv.

+ **W.P.(C) 752/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

J.L.DHUPAPR ..... Respondent
Through: Mr.Narottam Vyas, Mr.Vikramjeet Sikand, Advs.

+ **W.P.(C) 793/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

BHAGWATI PRASAD ..... Respondent
Through: Ms.Kittu Bajaj, Adv.

+ **W.P.(C) 1384/2010**

D.T.C. ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

SH.RAJENDER SINGH ..... Respondent
Through: Mr.N.L.Bareja, Adv.

+ **W.P.(C) 1386/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

SH.NANU RAM SHARMA ..... Respondent
Through: Mr.N.L.Bareja, Adv.

+ **W.P.(C) 2051/2010**

DTC ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

RANDHIR SINGH ..... Respondent
Through: Mr.N.L.Bareja, Adv.

+ **W.P.(C) 4906/2010**

DELHI TRANSPORT CORPORATION ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

RAMESH CHAND JAIN .....: Respondent
Through: Mr.N.L.Bareja, Adv.

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+ **W.P.(C) 4689/2010**

DEBI SINGH ..... Petitioner
Through: Ms.Deepali Gupta, Adv.

versus

DELHI TRANSPORT CORPORATION ..... Respondent
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

+ **W.P.(C) 1639/2010**

CHARANJIT BATRA ..... Petitioner
Through: Ms.Kittu Bajaj, Adv.

versus

DELHI TRANSPOROT CORPORATION ..... Respondent
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

+ **W.P.(C) 1729/2010**

CHARAN KAMAL ..... Petitioner
Through: Ms.Kittu Bajaj, adv.

versus

DTC ..... Respondent
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

+ **W.P.(C) 3339/2010**

D.T.C. ..... Petitioner
Through: Mrs.Avnish Ahlwawat, Ms.Latika Chaudhary, Advocate

versus

PULAK MUKHERJI ..... Respondent
Through: Mr.Amit Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?

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3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. With the promulgation of the Delhi Municipal Corporation Act 1957 and the Constitution of the Municipal Corporation of Delhi, municipal functions in Delhi except NDMC area and the area falling under the jurisdiction of the Cantonment Board were vested in the Municipal Corporation of Delhi, which included the function of providing public transport in the city of Delhi. As a separate wing of the Corporation, the Delhi Transport Undertaking was constituted with a separate budget and separate staff. As the city of Delhi grew, it was thought advisable to corporatize public transport in Delhi and thus the Delhi Transport Corporation was formed as a body corporate and it took over the functioning of the Delhi Transport Undertaking. The said Corporation had in place a Contributory Provident Fund Scheme for its employees and needless to state each month a fix amount was deducted from the salary of the employees and with a matching contribution by the Corporation was credited in the fund and in the account of the employee, who needless to state was a member of the Contributory Provident Fund. The employees of the Corporation agitated for long that the pension scheme of the Government of India, which was extended to the municipal employees be also extended to them and in respect of which claim they had petitioned the Supreme Court, when in the year 1992 the Corporation gave an assurance to the Supreme Court that it would introduce a pension scheme for its employees, including the retired employees and pursuant thereto issued office order No.16 dated 27.11.1992 notifying that a pension scheme stood notified which would be operated by the Life

(7)

Insurance Corporation of India (LIC). The office order reads as under:-

"No.Adm-I-5(4)/92 Dated 27.11.92

Sub : Introduction of Pension Scheme in DTC as applicable to the Central Govt. Employees.

The introduction of Pension Scheme for the employees of the DTC has been sanctioned by the Central Govt. and conveyed by the M.O.S.T. vide letter No.RT-12019/21/88-TAG dated 23.11.92 as on the same pattern as for the Central Govt. employees subject to the following conditions:-

1. The pension scheme would be operated by the LIC on behalf of DTC.

2. The date of effect of Pension Scheme would be 3.8.1981.

3. All the existing employees including those retired w.e.f. 3.8.1981 onwards would have the option to opt for the Pension Scheme or the Employees Contributory Provident Fund as at present, within 30 days from the date of issue of this O.O. for the implementation of the Pension Scheme as approved by the Govt. of India.

4. The Pension Scheme would be compulsory for all the new employees joining DTC w.e.f. 23.11.92, the date of sanction of the scheme.

5. The Pension Scheme would be operated by the LIC on behalf of DTC. The employees share in the EPF A/c of the DTC employees, who opt for Pension Scheme would be transferred to the LIC, for operating.

6. The employees who have retired on or after 3rd August 1981 and the existing employees, who have drawn the employer's share, under the EPF Act, partly or wholly shall have to refund the same with interest in the event of their opting for the Pension Scheme. The total amount to be refunded by the retired employees/existing employees would be the amount that would have accrued, had they not withdrawn the employer's share.

7. Excess amount of gratuity, if already paid to ex-employees and which is not admissible under the Pension Scheme, will have to be refunded by them before any benefit under the Scheme, is granted to them.

8. A due and drawn statement would be prepared in respect of retired employees opting for Pension Scheme and the amount to be paid/refunded, would be worked out by the concerned unit, wherefrom the employee had retired from service.

9. If any of the employee of DTC, who does not exercise any option within the prescribed period of 30 days or quit service or dies without exercising an option or whose option is incomplete or conditional or ambiguous. He shall be deemed to have opted the Pension Scheme Benefits.

Application forms for exercising option would be available with the Unit Officers and all employees including retired employees wishing to exercise option, should do so within the Unit of their present working/where from they retired, within a period of 30 days from the date of issue of this Office order.

The Unit Officers, after receiving the option from the ex-employees, will take further necessary action for getting the necessary forms completed, which will be supplied to them by the LIC for Pension etc. they will also ensure the recovery of EPF and Gratuity from the Ex-employees before forwarding their applications as mentioned above. The cases of all officers will be dealt with at Headquarters.

The options received from the existing employees for not opting Pension may be kept in their Personal file and entry made in their Service Book."

2. A perusal of the scheme shows that as regards the retired employees, they had to specifically opt to be paid pension and had to simultaneously refund to the Corporation, the employers' share received by them as members of the Contributory Provident Fund Scheme together with interest

(vide para 6 of the Scheme). As regards the existing employees, it was stated vide para 4, that the pension scheme would be compulsory for those who joined service under the Corporation with effect from 23.11.1992 and as regards the existing serving employees, vide para 9, it was stated that those who do not submit any option would be deemed to have opted for the pension scheme. Thus, it is apparent that as regards the existing employees of the Corporation who were still in service when the office order dated 27.11.1992 was promulgated, if they desired to continue to be the members of the Contributory Provident Fund Scheme they had to specifically say so, for the reason, their silence was to be treated as a deemed option to opt for the pension scheme and needless to state their positive option to opt for the pension scheme was always there.

3. Without working out the modalities with the LIC to work upon and implement the pension scheme and without completing the formalities of compiling the data as to who opted or who had to be treated as the deemed optee under the pension scheme and who specifically opted to continue to be a member of the Contributory Provident Fund Scheme, post haste, the Corporation notified a voluntary retirement scheme on 3.3.1993 contents whereof read as under:-

> "Sub:- Voluntary Retirement of Employees of Delhi Transport Corporation.
>
> The matter pertaining to the introduction of voluntary Retirement Scheme for the employees has been under the consideration of Delhi Transport Corporation. Salient Features of the proposed voluntary Retirement Scheme are as under:-
>
> 1. Applicability:
>
> The scheme will be applicable to all regular employees of the corporation i.e. workers and

executives who are appointed against regular vacancies in the corporation.

2. Eligibility:

An employee must have completed ten years of service in this corporation or completed 40 years of age to qualify for consideration under the Scheme. For this purpose, period of deputation/retention of lien in the parent office in lieu of deputation prior to absorption in the regular service of the Corporation will be excluded.

3. Conditions covering voluntary retirement.

(a) Voluntary retirement will be normally allowed only in cases of incumbents of the posts which have been declared surplus or redundant. However, voluntary retirement Scheme could also be allowed in other cases depending on the merits of each case and in the interest of the corporation.

(b) Voluntary retirement cannot be claimed by any employee as a matter of right. The corporation will have the right not to grant Voluntary Retirement for reasons to be recorded in writing. Under no reasons will the relief under this scheme be allowed from a date earlier than the date of passing the orders.

(c) An employee in whose case any disciplinary case is pending will not be considered under this scheme until the disposal of the same.

4. An employee who had taken voluntary retirement will be eligible to the following refunds/payments:-

(a) Balance in his PF Account as per rules of provident fund applicable to him.

(b) Encashment of refused leave and accumulated earned leave as per rules of the corporation applicable to him as if he retires under the normal rules of retirement.

(c) Gratuity as per payment of gratuity act and gratuity Rules of the corporation applicable to him.

(d) Three month notice pay as is applicable in the individual case as per the terms of him/her employment.

(e) An Ex-Gratia payment equivalent to 1-1/2 month's basic pay plus DA for such completed year of service limited to one month pay multiplied by the number of whose month of service left before normal date of retirement.

(f) Expenses for travelling for the entitled class for the employee and his/her family comprising his/her spouse and dependent members from the place of his/her posting to the place where he/she intends to settle down in India.

(g) **Pensionary benefits as per office order No.16 dt.27.11.92.** (Emphasis supplied)

All amounts due to the Corporation will be adjusted against the payments under (d) & (e) above and the employee concerned should clear any outstanding dues/advances taken before the date of effect of voluntary retirement.

Employees working on the post of Conductor in the Corporation are proposed to be covered under the Voluntary Retirement Scheme in the first instance. Such Conductors who are desirous of seeking voluntary retirement in the proposed Scheme may give their option in the prescribed Performa through proper channel within 15 days to be concerned Unit Officer who will forward the same to the Secretary, DTC Board.

This issue with the approval of competent authority."

4. Needless to state, the VRS Scheme clearly notified that those who opt for voluntary retirement would be entitled to pension as per the office order No.16 dated 27.11.1992 (vide para 4(g) of the VRS Scheme).

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5. Soon thereafter vide office memorandum dated 16.3.1993 the VRS Scheme notified on 3.3.1993 was made open, for offers to be submitted by all employees of the Corporation. The officer memorandum dated 16.3.1993 reads as under:-

> "Now, it has been decided to cover all the employees of the Corporation under the proposed Voluntary Retirement Scheme. Such employees who are desirous of seeking voluntary retirement in the proposed scheme may give their option in the prescribed proforma through proper channel within 15 days to the concerned Unit Officers, who will forward the same to the Secretary, DTC Board."

6. When DTC notified the pension scheme on 27.11.1992, the respondents of W.P.(C) Nos.14027/2009, 401/2010, 565/2010, 598/2010, 754/2010, 1902/2010, 2274/2010 (3 in number) and 3919/2010 specifically opted for the pension scheme. The respondents of W.P.(C) Nos.423/2010, 756/2010, 832/2010, 752/2010, 793/2010, 1384/2010, 1386/2010 and 2051/2010 did not submit any options and hence were to be treated as deemed optees for pension.

7. It may be noted that the writ petitioners of W.P.(C) Nos.1639/2010 and 1729/2010 also did not submit any options and hence would be deemed to be optees for pension.

8. It may also be noted that the respondent of W.P.(C) No.4906/2010 and the writ petitioner of W.P.(C) No.4689/2010 submitted their options expressly stating that they do not opt for the pension scheme, meaning thereby, they indicated positively that they would like to continue to be members of the Contributory Provident Fund Scheme.

9. On different dates, but all in the year 1993 the respondents of all the writ petitions except W.P.(C) No.1639/2010, W.P.(C) No.1729/2010 and W.P.(C)

No.3339/2010 and the writ petitioner of W.P.(C) No.4689/2010 submitted offers under the VRS Scheme afore-noted and requested to be relieved from service.

10. It is thus apparent that if request for voluntary retirement was accepted, the said respondents and the writ petitioner of W.P.(C) No.4689/2010, would or would not be entitled to pension would depend upon whether they or anyone of them had specifically opted to continue under the Contributory Provident Fund Scheme. We say so for the reason, pertaining to the existing employees, the pension scheme notified on 27.11.1992 clearly stated that those who specifically opted for the pension scheme and those who submitted no option whatsoever would be treated as opting for the pension scheme and only those who specifically opted to continue to be members of the Contributory Provident Fund Scheme would not be treated as optees under the pension scheme and would continue to be retained as members of the Contributory Provident Fund Scheme.

11. Thus, it is apparent that the respondent of W.P.(C) No.4906/2010 and the writ petitioner of W.P.(C) No.4689/2010, having exercised a positive option to continue to be retained as members under the Contributory Provident Fund Scheme, could under no circumstance claim benefit under the pension scheme.

12. In the year 1994, by and under a notification dated 5.12.1994, all employees of the Corporation except Officers, Traffic Supervisors, TIs, ATIs, Vehicle Examiners and Drivers, were given another chance to opt for Voluntary Retirement by submitting letters of offer. The scheme notified stated that all terms as per the VRS Scheme dated 3.3.1993 would apply. But, the said notification expressly stipulated the following condition:-

"**It is also notified for information of all such employees who opt for VRS that they would not be entitled to join Pension Scheme if they are allowed retirement under VRS.** Other salient features of the proposed VRS will remain the same as announced earlier vide this office circular dated 03.03.1993." (Emphasis added)

13. On 23.12.1994 another circular was issued extending the right to make offer by all the employees pertaining to the VRS Scheme notified on 5.12.1994. Thereafter on 8.5.1995, to a specified category of employees stipulated in the scheme were given the option to submit offers under the Voluntary Retirement Scheme. But there was an express condition therein that these employees would not be entitled to join the pension scheme.

14. The writ petitioners of W.P.(C) Nos.1639/2010 and 1729/2010, who were deemed optees under the pension scheme, having exercised no option at all pursuant to the notification dated 27.11.1992, submitted offer to be voluntarily retired on 4.1.1995 and 17.10.1995.

15. To put it in a nut-shell, all employees who are litigating under the various petitions either as the petitioner or as the respondents, except the two petitioners of W.P.(C) Nos.1639/2010 and 1729/2010, submitted offer letters to be voluntarily retired under the VRS Scheme notified on 3.3.1993, which contained the terms of the scheme and as extended from time to time in the year 1993.

16. As regards W.P.(C) No.3339/2010, the respondent thereof had retired on 10.7.1991 i.e. before the notification dated 27.11.1992 was issued and as regards him, vide para 6, if he did not specifically opt for the pension scheme within 30 days of the notification dated 27.11.1992 he would have got no benefit under the pension scheme for the reason on his

retirement he was paid over the due i.e. the amount to his credit under the Contributory Provident Fund Scheme. Had he exercised such an option he was obliged to have refunded the management's contribution credited to his account under the Contributory Provident Fund Scheme.

17. Thus, we can conveniently segregate the litigating parties in three compartments. Those who exercised option for voluntary retirement in 1993. Those who exercised option for voluntary retirement in the year 1995. Lastly the respondent of W.P.(C) No.3339/2010 whose case has to be dealt with de-hors the Voluntary Retirement Schemes.

18. We deal with the grievance of the Corporation pertaining to W.P.(C) No.3339/2010, the respondent whereof has got benefit from the Central Administrative Tribunal, where vide order dated 15.1.2010 his claim has been allowed by holding that he is a deemed optee for pension as per the pension scheme notified on 27.11.1992.

19. No discernable reasons are forthcoming from the decision of the Tribunal save and except that the Tribunal has treated his entitlement in terms of clause 9 of the pension scheme dated 27.11.1992, ignoring the fact that clause 9 applied to the serving employees of DTC and in respect of those who had retired prior to the promulgation of the notification dated 27.11.1992, were required to exercise a positive option to be given pension with concomitant act of refunding the management's share received by them under the Contributory Provident Fund Scheme, vide para 6 of the notification dated 27.11.1992. Indeed, this has been so held by a Division Bench of this Court in the decision dated 16.3.2000 in LPA No.33/1998 *DTC Vs. Sh.Baijnath Bhargav & Ors.* which decision has been upheld by the Supreme Court in

the decision reported as (2001) 6 SCC 61 *DTC Retired Employees Association & Ors. Vs. DTC & Ors.*

20. Thus, as regards W.P.(C) No.3339/2010 is concerned, noting that the respondent therein could not be treated as a deemed optee for the pension scheme and having not specifically opted for the pension scheme and having received all dues payable to him when he retired as per the amount lying to his credit as a member of the Contributory Provident Fund Scheme and obviously he having not opted for the pension scheme and thus not having returned the management's contribution pertaining to him and as credited in his account as a member of the Contributory Provident Fund Scheme, said respondent would have no case at all.

21. Thus, W.P.(C) No.3339/2010 is allowed. Impugned judgment and order dated 15.1.2010 allowing TA No.1209/2009 is set aside and TA No.1209/2009 is dismissed.

22. We take up the case of the petitioners of W.P.(C) Nos.1639/2010 and 1729/2010, who were in service as on 27.11.1992 and did not submit any option under the notification dated 27.11.1992 and hence vide clause 9 thereof would be treated as deemed optees for the pension scheme.

23. As is noted hereinabove, these two respondents applied to be voluntarily retired by submitting offers on 4.1.1995 and 17.10.1995 respectively. It is further to be noted that by then the voluntary retirement schemes notified earlier had lapsed and they could seek voluntary retirement as per the scheme notified on 23.12.1994 and 8.5.1995 respectively i.e. the VRS Schemes notified prior to the dates 4.1.1995 and 17.10.1995. As is noted hereinabove both schemes under which they applied specifically excluded entitlement for pension inasmuch as the two schemes clearly stated that employees opting for voluntary retirement under the two

schemes would not be entitled to pension; and as regards the other terms and conditions it was mentioned that the same would be as per the scheme notified on 3.3.1993.

24. It is apparent that the terms of the VRS Scheme notified on 3.3.1993 are incorporated by reference under the VRS Schemes notified on 23.12.1994 and 8.5.1995 except clause 4(g), for the reason in the two VRS Schemes in question, there is a specific reference to not being entitled to pension. We may re-note the conditions/terms of the said two schemes with reference to the language which expressly stated that it was notified for information of the employees that all those who opt for VRS under the two schemes would not be entitled to join the pension scheme if they are allowed to retire under the said schemes and that other salient features of the scheme would be the same as per the office circular dated 3.3.1993.

25. It may be noted that the pension scheme notified on 27.11.1992 could not be implemented because LIC backed out and it was only on 31.10.1995 did the Central Government provide the necessary fund and only those employees who retired after 1.11.1995 started receiving pension. In other words whether or not pension would have been paid remained inchoate till 31.10.1995.

26. Having retired pursuant to the VRS Schemes notified on 5.12.1994 and 8.5.1995, we see no scope for the petitioners of W.P.(C) Nos.1639/2010 and 1729/2010 to be entitled to receive any pension and we hold that the Tribunal has correctly dismissed their claim petitions.

27. To be fair to the said writ petitioners, we may note that the only submission urged by their counsel was that the orders relieving them and enclosing the amount lying to their credit in the Contributory Provident Fund Scheme referred to

the fact that they were being retired as per the VRS Scheme dated 3.3.1993 and as extended to all the employees on 16.3.1993. Predicated thereon was the submission that these employees have been treated as having voluntarily retired under the VRS scheme notified on 3.3.1993 which stated that pension would be paid.

28. Suffice would it be to state that a bare perusal of the orders referred to by learned counsel, evidence that a printed proforma has been used. The same pertained to the earlier VRS Schemes. It is settled law that rights are determined not with reference to the language of the proforma but the statute or the scheme applicable. The said two petitioners submitted offers to be voluntarily retired under the schemes notified on 5.12.1994 and 8.12.1995. Further, they received the cheques tendered to them which included the management's share in the Contributory Provident Fund Account. These cheques were received by them on 31.3.1995 and 31.10.1995 respectively. They encashed the cheques. We may note that these two petitioners had filed writ petitions in the year 2005 and 2007 respectively laying a claim for pension which were transferred to the Central Administrative Tribunal and registered as TA No.689/2009 and TA No.1385/2009 respectively, which have been dismissed by the Tribunal vide impugned order dated 23.9.2009. The claim of these writ petitioners would even otherwise be barred by the law of limitation. The principle that right to receive pension is a continuous cause of action is not available to them inasmuch as qua them, the issue was whether they were entitled to receive dues as per Contributory Provident Fund Scheme or under the pension scheme. They were paid full dues when they retired on 31.3.1995 and 31.10.1995 respectively as per the Contributory Provident Fund Scheme and if they had any

grievance pertaining to the same, it had to be brought before a Competent Court within at most 3 years thereafter.

29. Thus, W.P.(C) Nos.1639/2010 and 1729/2010 are dismissed.

30. Pertaining to the remaining 18 writ petitions, we may divide the same into 3 further categories which emerge from the facts noted by us in para 6 and 8 above. The said 18 writ petitions are divided: Category 1- Respondents of W.P.(C) Nos.14027/2009, 401/2010, 565/2010, 598/2010, 754/2010, 1902/2010, 2274/2010 and 3919/2010 who specifically opted for the pension schemes when they submitted their offer for being voluntarily retired as per the terms and conditions notified in the VRS Scheme notified on 3.3.1993 which was made applicable by reference to the subsequent schemes notified in the year 1993. Category 2- Respondents of W.P.(C) Nos.423/2010, 756/2010, 832/2010, 752/2010, 793/2010, 1384/2010, 1386/2010 and 2051/2010 who having not submitted any options have to be treated as deemed optees for the pension scheme when they submitted their offer for being voluntarily retired as per the terms and conditions notified in the VRS Scheme notified on 3.3.1993 which was made applicable by reference to the subsequent schemes notified in the year 1993. Category 3- Respondents of W.P.(C) No.4906/2010 and the writ petitioner of W.P.(C) No.4689/2010 who specifically opted to be retained in the Contributory Provident Fund Scheme.

31. We take category 3 first. Surprisingly, one claimant being the respondent of W.P.(C) No.4906/2010 has succeeded before the Tribunal and the other i.e. the petitioner of W.P.(C) No.4689/2010 has lost, notwithstanding their cases being identical.

32. Having perused the reasons given by the Tribunal in favour of the respondent of W.P.(C) No.4906/2010 as per para 22 of the impugned order dated 13.4.2010, suffice would it be to state that the Tribunal has gone off at a complete tangent by referring to some policy decisions dated 30.4.1993 and 7.5.1993 which refer to those who have given no option whatsoever to be treated as optees under the pension scheme. We fail to understand as to how said decisions can apply to the respondent of W.P.(C) No.4906/2010 who specifically opted to be retained as a member under the Contributory Provident Fund Scheme. Noting further that said respondent received the full amount payable to him as a member of the Contributory Provident Fund Scheme which included the management's contribution in the fund pertaining to his account, it would be another reason to hold against him and lastly that having retired in the year 1993 and received full dues in the same year he could not rake up the issue when he filed OA No.2053/2009 in the year 2009 before the Tribunal. We concur with the reasoning given by the Tribunal pertaining to the writ petitioner of W.P.(C) No.4689/2010 when OA No.2371/2009 filed by him was dismissed vide order dated 18.2.2010.

33. Thus, W.P.(C) No.4689/2010 is dismissed.

34. W.P.(C) No.4906/2010 is allowed. The impugned order dated 13.4.2010 allowing OA No.2053/2009 is set aside and OA No.2053/2009 is dismissed.

35. The claim of the respondents in category 1 and category 2 may be taken up together for the reason whether they exercised a positive option to be brought under the pension scheme or having exercised no option whatsoever and hence as deemed optees being brought under the pension scheme, their status would be the same as entitled to be

brought under the pension scheme under the notification dated 27.11.1992. Since all these respondents applied for being voluntarily retired when the scheme notified on 3.3.1993 was extended from time to time in the year 1993, they certainly would be entitled to pension for the reason clause 4(g) of the scheme notified on 3.3.1993 clearly stated that such persons would be entitled to pensionary benefits. But, there are certain further facts which need to be noted qua them. The case of the Corporation is that having opted under the pension scheme or deemed to have opted under the pension scheme, the said respondents specifically opted out from the pension scheme and by the time they retired under the Voluntary Retirement Scheme, the pension scheme had not been formally brought into effect (as noted above it was formally brought into effect for the retirees who retired post 1.11.1995), they filed applications specifically stating that they intend to opt out of the pension scheme and be retained as members under the Contributory Provident Fund Scheme and thus on accepting their offers to be voluntarily retired the Corporation paid over to them not only their share in the Contributory Provident Fund Account but even the management's share, which they accepted without demur and hence could not rake up the issue after 12 to 15 years i.e. when they filed either writ petitions in this Court which were transferred to the Central Administrative Tribunal or filed Original Applications before the Central Administrative Tribunal.

36. Qua these respondents, it may be noted that the respondent of W.P.(C) No.14027/2009 submitted a letter dated 2.3.1995 specifically stating that he does not want to opt for the pension scheme and desires his dues to be paid as per his CPF Account. The respondent of W.P.(C) No.565/2010 likewise

submitted a letter on 12.7.1995. The respondent of W.P.(C) No.598/2010 likewise submitted a letter in the year 1994 and reaffirmed the said fact in the letter dated 5.11.1998. The respondent of W.P.(C) No.754/2010 likewise submitted a letter on 20.4.1995. The respondent of W.P.(C) No.1902/2010 likewise submitted a letter on 14.7.1995. The 3 respondents of W.P.(C) No.2274/2010 likewise submitted letters on 11.3.1994, 15.3.1994 and 9.6.1995 respectively. The respondent of W.P.(C) No.3919/2010 likewise submitted a letter on 22.7.1996. The respondent of W.P.(C) No.423/2010 likewise submitted a letter on 5.10.1994. The respondent of W.P.(C) No.756/2010 likewise submitted a letter on 15.3.1994 as claimed by the DTC but denied by said respondent. We note that DTC has produced said letter and additionally has relied upon a list prepared on 12.4.1994 where the name of said respondent is at serial No.113 and notes his opting out for pension. The respondent of W.P.(C) No.832/2010 likewise submitted a letter on 5.9.1995. The respondent of W.P.(C) No.752/2010 likewise submitted a letter on 7.12.1993. The respondent of W.P.(C) No.401/2010 also opted out of the pension scheme, though the date when he did so is not on record.

37. It may be noted that all aforesaid respondents except the respondent of W.P.(C) No.756/2010, who claims not to have written letter dated 15.3.1994, and the respondent of W.P.(C) No.401/2010 who is silent on the aspect of his having opted out i.e. has chosen not to rebut the plea of the Corporation that he opted out of the pension scheme, have pleaded that they wrote the letters out of compulsion because it was uncertain whether at all the pension scheme would be introduced and there was complete uncertainty whether at all

the pension scheme would be introduced and if yes, from which date.

38. Qua the stand taken by the respondent of W.P.(C) No.756/2010, suffice would it be to state that DTC has produced the letter written by him under his signatures. It is a handwritten letter. He has not denied that the writing is not his. He has not denied his signatures thereon. His vague denial that he never wrote the letter, without taking specific stand is neither here nor there. Further, as we would be noticing qua the other respondents he received the CPF dues when he retired with effect from 31.5.1993 and thereafter received the CPF dues and kept quiet till he filed a writ petition in this Court in the year 2008 which was transferred to the Central Administrative Tribunal in the year 2009 and was registered as TA No.1449/2009.

39. Proceeding further, we note that the pleadings qua when the respondents of W.P.(C) Nos. 793/2010, 1384/2010, 1386/2010 and W.P.(C) No.2051/2010 submitted applications to opt out of the pension schemes are not clear, but it is not in dispute and it is the joint case of the Corporation as well as said respondents that they i.e. the respondents of the said writ petitions subsequently opted out of the pension scheme and received all dues under the CPF Scheme. They also claim that they did so because it was not certain as to whether at all pension scheme would be brought into force when they voluntarily retired in the year 1993.

40. In a nut-shell all these respondents plead that they were under compulsion to opt out of the pension scheme after they had submitted their offer to be voluntarily retired and after the same was accepted and they stood retired; compulsion being the uncertainty of pension being paid and their pressing need for funds. The legal argument advanced

by them is that once their offer for being compulsorily retired was accepted, the contract stood concluded by the acceptance of the offer and the terms of the contract was as contained in the VRS Scheme notified on 3.3.1993, which specifically stated that such retirees would be entitled to pension. They claim that later on, the contract could not be modified and thus their subsequent letters to opt out of the pension scheme and revert back to the CPF Scheme could not be accepted.

41. The argument of the said respondents has to be noted and rejected for the reason nothing prevented the parties to novate the contract. It is settled by now that a VRS Scheme has an element of contract. The VRS Scheme is an invitation to offer. The employees make an offer under the scheme being, to retire on the terms notified as per the scheme. On being accepted, the letter of offer results in the contract being concluded and the employees become entitled to the dues as per the VRS Scheme. But, nothing prevents the parties to novate the contract. In the instant case the contract got novated when the said respondents wrote that instead of being paid pension as per the scheme they be paid the dues as per the CPF Scheme and thereafter they received even the management's share under the CPF Scheme. It is settled law that one manner of accepting an offer is to perform the obligation to be performed as per the offer. Thus, by making payment under the CPF Scheme the Corporation accepted the offer of these employees to forego claim for pension and instead entire due under the CPF Scheme be paid.

42. There remains then the issue to be decided whether the said respondents were under a compulsion and if yes the affect thereof.

43. The compulsion alleged by them is the uncertainty of pension being released. As noted hereinabove the pension

scheme notified on 27.11.1992 could not take off because LIC did not fund the scheme as envisaged and later on the Central Government agreed to fund the scheme on 31.10.1995 and indisputably those who retired after 1.11.1995 were paid pension. Thus, the compulsion resulting as the consequence of the uncertainty of pension being released, which may have been uncertain when the said respondents opted out to receive pension and reverted to receive benefit under CPF, came to an end on 1.11.1995. The silence of these respondents for periods ranging from 12 to 15 years when they took recourse to legal action is clearly indicative of there being no compulsion. The silence of these respondents speaks for itself. It is apparent that with the passage of time these respondents became clever by a dozen and thought why not take the benefit of a few who likewise went to Court and obtained relief, by pulling wool over the eyes of the Court by pleading that their act of subsequently opting out of the pension scheme was meaningless because the contract stood concluded, a submission which was accepted by the Courts without considering the further issue of contract being novated.

44. In our opinion these respondents have no claim whatsoever to receive pension. They novated the contract by volition when they subsequently opted out of the pension scheme and DTC accepted the same and paid to them even the management's share in the CPF account. Their claims are hit by delay, laches and limitation. They are not entitled to plead that right to receive pension is a continuous cause of action, for the reason, in law either pension can be received or benefit under the CPF account. If the management forces down the gullet of an employee payment under the CPF Scheme and the employee desires pension he has to approach

the Court or the Tribunal within a maximum period of 3 years being the limitation prescribed to file a suit.

45. That apart, if it was the case of the respondents that they were compelled to opt out of pension scheme on account of the uncertainty in the implementation of the pension scheme, they ought to have sought a declaration that their act of opting out of the pension scheme be declared null and void, being out of compulsion and for said prayer they ought to have made the requisite pleadings entitling them for such a declaration. Needless to state an act out of compulsion is a voidable act and not a void act. The respondents have admittedly not done so. It is only in the rejoinder filed by them to the reply to their respective OA that a bald plea has been set forth that they acted out of compulsion when they opted out of the pension scheme.

46. Accordingly, we hold that the said writ petitions have to be allowed.

47. We allow W.P.(C) Nos.14027/2009, 401/2010, 565/2010, 598/2010, 754/2010, 1902/2010, 2274/2010 3919/2010, 423/2010, 756/2010, 832/2010, 752/2010, 793/2010, 1384/2010, 1386/2010 and 2051/2010 and set aside the impugned orders dated 30.6.2009, 3.8.2009, 3.9.2009, 23.9.2009, 25.9.2009, 8.10.2009, 13.10.2009, 4.11.2009 and 26.11.2009 i.e. the singular or composite orders disposing of one or more Transferred Application or Original Application before the Tribunal and as a consequence dismiss all the Transferred Applications or Original Applications allowed in favour of the respective respondent(s).

48. To summarize the 21 writ petitions stand disposed of as under:-

A. W.P.(C) No.1639/2010, W.P.(C) No.1729/2010 and W.P.(C) No.4689/2010 are dismissed.

B. W.P.(C) No.14027/2009, W.P.(C) No.401/2010, W.P.(C) No.565/2010, W.P.(C) No.598/2010, W.P.(C) No.754/2010, W.P.(C) No.1902/2010, W.P.(C) No.2274/2010 W.P.(C) No.3919/2010, W.P.(C) No.423/2010, W.P.(C) No.756/2010, W.P.(C) No.832/2010, W.P.(C) No.752/2010, W.P.(C) No.793/2010, W.P.(C) No.1384/2010, W.P.(C) No.1386/2010, W.P.(C) No.2051/2010, W.P.(C) No.4906/2010 and W.P.(C) No.3339/2010 are allowed and the impugned orders passed by the Central Administrative Tribunal which are challenged in the said writ petitions are set aside and the respective Transferred Petition or Original Application are dismissed.

49. There shall be no orders as to costs.

Sd/-

(PRADEEP NANDRAJOG)
JUDGE

Sd/-

(MOOL CHAND GARG)
JUDGE

AUGUST 10, 2010
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Fresh RP 435/10 u/s 151 CPC by respondent for review of above order.

" CM 14443/10 u/s 151 CPC for exemption

" CM 14444/10 delay in refiling